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Torts - Liability of Landlord for Injuries Sustained By Tenants From Detective Furniture in Furnished Premises

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his wife for damages,²¹ they did not see fit to extend a right of action to an unemancipated minor against a parent.

When the rule was first enunciated in 1891, the court could not rely on precedent since there was no common law rule to that effect. The court was forced at that time to rely on the public policy factor to justify its decision. If that reason had a justification years ago, it certainly does not any longer. Years ago suits between husband and wife were not permitted because of public policy, but now they are generally permitted by statute.²²

Liability insurance is either compulsory by statute or necessarily essential by virtue of the very great number of accidents occurring every day in our complex manner of living. When liability insurance is involved practically all the arguments which might have justified the majority rule no longer exist. The funds of the family are not depleted in favor of one child at the expense of the others, family tranquillity is not disrupted and the parent is not enriched since the funds are usually held in trust until the child reaches majority. The argument that a change of the courts' position would open the door to fraud is without merit. Insurance companies and the courts are forever on the alert for practices of this kind, if and when they occur, and it cannot be said that in states where a wife may sue a husband or the husband the wife that fraud is being practiced on insurance companies and the courts.

The law should be relaxed and modified where the parent is protected by liability insurance. Of course this would conflict with the settled principle that the liability of the insurance company is purely derivative and not primary, but this does not seem to be an important factor in the cases that have decided this issue. Regardless of how it is to be effected, by court decision or by legislative action, an unemancipated minor should be permitted to recover for injuries caused by a negligent parent who has attempted to protect his children's interest by carrying liability insurance.

RICHARD B. ANTARAMIAN

Torts—Liability of Landlord for Injuries Sustained by Tenants from Defective Furniture in Furnished Premises—Plaintiffs had been renting one of defendant's apartments for fourteen months. Mrs. Forrester, one of the plaintiffs, sustained personal injuries caused by the falling of a wall bed in the apartment. She sued defendant landlord for negligence, alleging a concealed defect. *Held*: generally a landlord is not liable for a tenant's injury due to defective condition of the premises. If the landlord is liable because of an implied warranty that the premises are fit for habitation, this warranty merely extends to the premises at the beginning of the term and does not

²¹ Wis. Stat. (1947) sec. 246.075.

²² Wis. Stat. (1947) secs. 246.07 and 246.075.

cover a condition that arises subsequently unknown to the landlord. *Forrester et ux. v. Hoover Hotel & Investment Co.*, 196 P. (2d) 825, (Cal., 1948).

In the absence of any wilful wrong or fraud the weight of authority is that the landlord is under no implied obligation as to the condition of the demised premises,¹ has no duty to repair defects,² and is not liable for injury to an invitee of the tenant's where he has not made any warranty or contract as to the condition of the premises or as to the repair of defects.³ It is the duty of the tenant to make examinations of the premises to determine their safety and adaptability to the purposes for which they are hired. For personal injuries received by the tenant from latent defects, of which the landlord had no knowledge at the time of the letting, the latter cannot be held liable.⁴ However the landlord is liable for misfeasance such as negligence in making improvements or repairs, or if he promises to make repairs in tenant's absence, and falsely represents that repairs have been made.⁵ Some courts have held that if the landlord knowingly conceals a defect, or fraudulently represents that the premises are safe when the danger is not discoverable by ordinary care on the part of the tenant, the landlord is liable.⁶ A few find liability where the landlord could have known through ordinary care.⁷ Some hold that if an invitee of the tenant is lawfully on the premises and the landlord negligently fails to repair, he is liable to the third person for injury.⁸

The rule that there is an implied warranty when a landlord leases furnished premises seems to have started with the English case of *Smith v. Marrable*,⁹ which, disregarding the doctrine of caveat emptor, maintains that the premises must be immediately suitable for occupancy. Only California and Massachusetts appear to follow the English rule. They follow it only as to defects existing at the beginning of the term,¹⁰ and do not apply it where the tenant has been in possession for

¹ *Anderson v. Hayes*, 101 Wis. 538, 77 N.W. 891 (1899); 32 Am. Jur., Landlord and Tenant 662.

² 32 Am. Jur., *supra*, note 1.

³ *Jaffe v. Harteau*, 56 N.Y. 398, 15 Am. Rep. 438 (1874).

⁴ *Borden v. Hirsch*, 249 Mass. 205, 143 N.E. 912 (1924); *Glenn v. Hill*, 210 Mo. 291, 109 S.W. 27 (1908).

⁵ *Feeley v. Doyle*, 222 Mass. 155, 109 N.E. 902 (1915); *Restatement of the Law of Torts*, sec. 362; *Vollkommer v. Menge*, 116 N.J.L. 82, 182 Atl. 347 (1935).

⁶ *Sunasack v. Morey*, 196 Ill. 569, 63 N.E. 1039 (1902); *Long v. Joseph Schlitz Brewing Co.*, 214 Ill. App. 517 (1919); *Martin v. Richards*, 155 Mass. 381, 29 N.E. 591 (1892).

⁷ *State v. Boyce*, 73 Md. 469, 21 Atl. 322 (1891); *Wilcox v. Hines*, 100 Tenn. 538, 46 S.W. 297 (1898).

⁸ *Merchants Cotton Press & Storage Co. v. Miller*, 135 Tenn. 187, 186 S.W. 87 (1916); *Flood v. Pabst Brewing Co.*, 158 Wis. 626, 149 N.W. 489 (1914).

⁹ *Smith v. Marrable*, 11 M.&A. 5, 152 Eng. Rep. 693 (1843).

¹⁰ *Fischer v. Pennington*, 116 Cal. App. 248, 2 P.(2d) 518 (1931); *Charleville v. Metropolitan Trust Co.*, 136 Cal. App. 349, 29 P.(2d) 241 (1934); *Bolieau v. Traiser*, 253 Mass. 346, 148 N.E. 809 (1925); *Hacker v. Nitschke*, 310 Mass. 754, 39 N.E. (2d) 644 (1942).

some time.¹¹ Other courts have refused to adopt the rule in cases where injuries resulted from defective bathtubs,¹² washtub covers,¹³ beds,¹⁴ carpets, rugs, and the like,¹⁵ clothes dryers,¹⁶ faucets,¹⁷ heaters,¹⁸ and toilets.¹⁹

A tenant has a right to the undisturbed enjoyment of leased premises, but if one merely rents lodging, the proprietor, innkeeper or landlord retains control of the premises, and the "lodger" acquires no estate but has merely the use without actual or exclusive possession.²⁰ Since the innkeeper retains the right to enter and because of the character of the lodger's occupancy the innkeeper is liable for injuries, for he owes his lodgers a duty of ordinary care in seeing that the premises he rents are reasonably safe for use.²¹

Today there is a legislative tendency to protect occupants of buildings, as evidenced by the Wisconsin safe place statute.²² With furnished apartments and dwellings becoming more popular and prevalent, and with increasing numbers of housing statutes,²³ it might be expected that legislatures will further enlarge the landlord's duty to maintain safe premises.

JOHN D. STEIN

¹¹ *Young v. Povich*, 121 Me. 141, 116 Atl. 26 (1922); *Davis v. George*, 67 N.H. 393, 39 Atl. 979 (1893), where the judge commented at 396: "if the landlord knows that the tenant proposes to occupy the house for a term of years as a place for the accommodation of the traveling public, why should the fact that the landlord also leases to him the furniture in the house imply an additional agreement on his part that the house is suitable for hotel purposes or habitation."

¹² *Rowan v. Amoskeag Mfg. Co.*, 79 N.H. 409, 109 Atl. 561 (1920).

¹³ *Cooperman v. Anderson*, 158 Misc. 155, 285 N.Y.S. 376 (1935); *Fleming v. Oppel*, 300 N.Y.S. 588 (1937), *aff'd*, 254 App. Div. 740, 3 N.Y.S. (2d) 971 (1938).

¹⁴ *Jefferson Standard Life Ins. Co. v. Watson*, 242 Ala. 181, 5 So. (2d) 639 (1942).

¹⁵ *Felshin v. Sir*, 149 Fla. 218, 5 So. (2d) 600 (1942); *Breazeale v. Chicago Title & Trust Co.*, 293 Ill. App. 269, 12 N.E. (2d) 217 (1938).

¹⁶ *Newell v. Weisman*, 113 Conn. 744, 156 Atl. 886 (1931); *Boylan v. 1986 Grand Ave. Realty Corp.*, 169 Misc. 881, 8 N.Y.S. (2d) 200 (1938).

¹⁷ *Logsdon v. Central Development Ass'n*, 233 Mo. App. 499, 123 S.W. (2d) 631 (1938); *Swanson v. Whith & Bollard, Inc.*, 185 Wash. 407, 55 P. (2d) 332 (1936).

¹⁸ *Gathemann v. Rosenfeld*, 190 Ill. App. 110 (1914).

¹⁹ *Samuels v. A. M. Realty Co.*, 165 N.Y.S. 979 (1917).

²⁰ *Coggins v. Gregorio*, 97 F.(2d) 948 (1938).

²¹ *Burchmore v. Antlers Hotel Co.*, 54 Colo. 314, 130 P. 846 (1913); *Marden v. Radford*, 279 Mo. App. 789, 84 S.W. (2d) 947 (1935); *Patrick v. Springs*, 154 N.C. 270, 70 S.E. 395 (1911); *Tamres v. Reed*, 109 Pa. Super. 28, 165 Atl. 538 (1933).

²² Wis. Stat. sec. 101.06. "Every employer and every owner of a place of employment or a public building now or hereafter constructed shall so construct, repair or maintain such place of employment or public building, and every architect shall so prepare the plans for the construction of such place of employment or public building, as to render the same safe."

²³ Mich. Comp. Laws (Supp., 1940) sec. 2559: applicable to all large cities. "Every dwelling and all the parts thereof, including plumbing, heating, ventilating and electrical wiring shall be kept in good repair by the owner. The roof shall be so maintained as not to leak, and the rain water shall be drained and conveyed therefrom through proper conduits into the sewerage system in accordance with plumbing regulations so as to avoid dampness in the walls and ceilings and unsanitary conditions."